APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>25 February 2008</u>.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-35</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-35</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All   b) ☐ Some * c) ☐ None of:
   1. ☐ Certified copies of the priority documents have been received.
   2. ☐ Certified copies of the priority documents have been received in Application No. _____.
   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-35 are presented for examination.

Double Patenting

2.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3.   Claims 1, 8, 16, 19, 26, 29, and 35 are provisionally rejected on the ground of

nonstatutory obviousness-type double patenting as being unpatentable over claims 1

and 8 of copending Application No.10/666,464.

4.   Although the conflicting claims are not identical, they are not patentably distinct

from each other. For example, claim 1 teaches a method for associated a ghost agent

with a host, determining operation metrics and moving the host from one grid to

another. These steps are the same and obvious as the steps of claims 1 and 8 of

copending Application No. 10/666,464. The examiner can ascertain no difference

between the claims of the present application and that of copending Application No.

10/666,464. It is noted that the minor difference encompass replacement of the

recitation of the limitations in the claims and it appears to be substantially the same or

duplication or in some instance obvious over one another.

5.   This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

6.   Claims 1, 4, 6-8, 11-19, 24-26, and 29-35 are rejected on the ground of

nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2,

4, 10, 13-14, 16-17, 1-21, and 32 of U.S. Patent No. 7,284,156. Although the conflicting

claims are not identical, they are not patentably distinct from each other. For example,

claim 1 teaches a method for identifying a host, associating a ghost agent to said host,

moving the host from one grid to another, and in response to said moving, moving said

ghost agent from one grid to another. These steps are the same and obvious as the

steps of claims 1, 13, 1620, and 32 of U.S. Patent No. 7,284,156. The examiner can

ascertain no difference between the claims of the present application and that of U.S.

Patent No. 7,284,156. It is noted that the minor difference encompass replacement of

the recitation of the limitations in the claims and it appears to be substantially the same

or duplication or in some instance obvious over one another.

Claim Rejections - 35 USC § 101

7.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8.   Claims 16-18, and 34-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

9.   Claims 16-18, and 34-35 are rejected because the claimed invention, appearing to be comprised of <u>software alone</u> without claiming associated <u>computer hardware</u> required for execution, is not supported by either a specific and substantial asserted utility (i.e., transformation of data) or a well established utility (i.e. a practical application). It is suggest that applicant amend the claims to include a processor and memory. Claim 16 recites, "in a computer system". It is entirely possible for a software embodiment to be used in a computer system. Claim 34 recites, "a computer system". It is entirely possible for a computer system to be implemented in software.

Claim Rejections - 35 USC § 103

10.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11.   Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Boukobza et al. (US Pat No. 6,122,664) in view of Fukuda et al. ("A Mobile-Agent-

Based PC Grid", Autonomic Computing Workshop, June 2003).

12.   Regarding claim 1, Boukobza teaches a method for gathering operational metrics

within a grid environment comprising the steps of:

        identifying a host, wherein said host is a software object operating in a grid of

said grid environment (col 2 lines 20-37);

        associating a ghost agent within said grid with said host, wherein said ghost

agent is configured to replicate and record at least one action of said host within said

grid (col 2 lines 29-31, wherein each agent comprises a plurality of specific modules

specific to the different object type or to a particular domain, and col 6 lines 30-34;

wherein log files or the actions of each node are monitored);

        determining operational metrics for at least a portion of said recorded at least one

action (col 2 lines 52-55);

        recording said operational metrics (col 5 lines 23-25).

13.   Boukobza does not explicitly disclose moving said host within said grid

environment and responsively moving said ghost agent in accordance with movement

of said host.

14.   However, Fukuda teaches moving said host from said grid to another grid within

said grid environment (page 1, col 1, lines 6-10; page 2, col 1, lines 30-32); and in

response to said moving of said host, moving said ghost agent from said grid to said

another grid (page 2, col 1, lines 7-12).

15.   It would have been obvious to a person of ordinary skill in art at the time of

invention was made to incorporate the teaching of Fukuda into the method of Boukobza

to have a ghost agent moving from one environment to another with the host. The

modification would have been obvious because one of the ordinary skills of the art

would have an agent that can move with one host to be able to record and keep track of

all the host activities without any lapse in record.

16.   Regarding claims 2-3, Boukobza teaches that the operational metrics comprise

performance metrics or load metrics (col 2 lines 46-55).

17.   Regarding claim 4, Boukobza teaches identifying a location for logging data that

is external to said ghost agent; and, conveying said recorded operational metrics to said

identified location (col 6 lines 30-34; wherein log files or the actions of each node are

monitored).

18.   Regarding claim 5, Boukobza teaches generating test input based in part upon

said recorded operational metrics (col 3 lines 30-39).

19.   Regarding claim 6, Boukobza and Fukuda do not explicitly teach that said ghost

agent is deployed within a production segment of said grid environment, said method

further comprising the steps of:

        deploying at least one ghost agent within a test segment of said grid

environment; and,

        recording operational metrics relating to tests conducted within said test segment

        using said deployed at least one ghost agent.

20.   However, it would have been obvious to one of ordinary skill in the art at the time

of the invention, to deploy a ghost agent in a test environment and record operation

metrics. One would be motivated to perform testing on a software object in a testing

platform to test for bugs and errors.

21.   Regarding claim 7, Boukobza teaches: selecting a plurality of hosts; and,

        for each selected host, repeating said associating step, said recording step, and

said moving step (col 4 line 36 to col 5 line 17).

22.   Regarding claim 8, Boukobza teaches a method for determining operational

metrics within a grid environment comprising the steps of:

        identifying a transaction comprising a plurality of actions (col 2 lines 13-19,

wherein the execution of an application is performed on multiple nodes);

executing said actions within different grids of said grid environment, by at least

one host (col 2 lines 13-19, wherein the execution of an application is performed on

multiple nodes);

replicating said actions within at least one ghost agent (col 5 lines 13-18);

recording data relating to said replicated actions (col 6 lines 30-34); and,

determining operational metrics for said transaction based upon said recorded data (col

5 lines 23-29).

23.   Boukobza does not explicitly disclose moving said host within said grid

environment and responsively moving said ghost agent in accordance with movement

of said host.

24.   However, Fukuda teaches moving said host from said grid to another grid within

said grid environment (page 1, col 1, lines 6-10; page 2, col 1, lines 30-32); and in

response to said moving of said host, moving said ghost agent from said grid to said

another grid (page 2, col 1, lines 7-12).

25.   It would have been obvious to a person of ordinary skill in art at the time of

invention was made to incorporate the teaching of Fukuda into the method of Boukobza

to have a ghost agent moving from one environment to another with the host. The

modification would have been obvious because one of the ordinary skills of the art

would have an agent that can move with one host to be able to record and keep track of

all the host activities without any lapse in record.

26.   Regarding claims 9-10, Boukobza teaches that the operational metrics comprise performance metrics or load metrics (col 2 lines 46-55).

27.   Regarding claim 11, Boukobza does not explicitly teach that different locations exist within different grids of said grid environment. However, it would have been obvious to one of ordinary skill in the art at the time of the invention, that the nodes of Boukobza's system, could be placed in different grids. One would be motivated by the desire to gather operational metrics from different areas.

28.   Regarding claims 12-15, Boukobza does not teach executing said actions within a production or test segment of said grid environment, wherein said transaction is executed for an application, said determining step further comprising the step of: determining said operational metrics while actions for different applications are being executed within said production or test segment.

29.   It would have been obvious to one of ordinary skill in the art at the time of the invention to include running a transaction in a production or test segment and determining operational metrics for the transactions. One would be motivated by the desire to first perform the method of Boukobza first in a testing environment to test for errors and migrate the system to a production environment once it is ready to go online.

30.   Regarding claim 16, Boukobza teaches a ghost agent as claimed according to claim 1.

31.   Regarding claim 17, Boukobza teaches a ghost identifier configured to identify

said ghost agent to components within said grid environment (col 5 lines 13-17).

32.   Regarding claim 18, Fukuda teaches:

        means for disassociating said ghost agent from said host; and,

        means for associating said ghost agent with a different host (pg 2 col 2 lines 33

to pg 3 col 1 line 7).

33.   Regarding claims 19-33, they are machine-readable storage claims of claims 1-

15 above. Therefore they are rejected for the same reasons as claims 1-15 above.

34.   Regarding claim 34, it is the system claim of claim 1 above. Therefore it is

rejected for the same reasons as claim 1 above.

35.   Regarding claim 35, it is the system claim of claim 8 above. Therefore it is

rejected for the same reasons as claim 8 above.

Response to Arguments

36.   Applicant's arguments with respect to all claims have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

37.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric C. Wai whose telephone number is 571-270-1012. The examiner can normally be reached on Mon-Thurs, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng - Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meng-Ai An/   /Eric C Wai/
Supervisory Patent Examiner, Art Unit 2195   Examiner, Art Unit 2195